

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Revision of Part 22 and Part 90 of
the Commission's Rules to Facilitate
Future Development of Paging Systems
Band by the Private Land Mobile
Radio Service

WT Docket No. 96-18

Implementation of Section 309(j) of
the Communications Act -- Competitive
Bidding

PP Docket No. 93-253

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COMMENTS ON INTERIM LICENSING PROPOSAL

A+ Network, Inc. ("A+"), by its attorneys, and pursuant to Section 1.415 of the Commission's Rules, hereby submits comments in response to the Notice of Proposed Rule Making in the captioned proceeding.^{1/} For its comments A+ states as follows:

Procedural Matters

In addition to proposing the substantial permanent revision of the Commission's paging licensing standards and procedures, the NPRM set forth certain interim limitations on the licensing of paging facilities during the pendency of this proceeding.^{2/} The NPRM also directed that comments addressing the Commission's interim licensing proposal be submitted by March 1, 1996. These comments are A+'s timely response to that directive.

^{1/} Notice of Proposed Rule Making, WT Docket No. 96-18, PP Docket No. 93-253, FCC 96-52 (released February 9, 1996) (hereinafter "NPRM").

^{2/} NPRM, at ¶ ¶ 139-149.

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Background

A+ is a publicly traded company operating Commission licensed paging systems throughout the southeastern United States. Although A+ operates both CCP and PCP facilities, these comments have as their primary focus issues affecting PCP systems, and particularly systems licensed in the 929-930 MHz band.

Discussion

Addition or Modification of 929-930 MHz Sites

Under the interim licensing procedures outlined in the NPRM, incumbent licensees are permitted to "add sites to existing systems or modify existing sites, provided such additions or modifications do not expand the interference contour of the incumbent's existing system."^{3/} While recognizing that "Part 90 rules do not provide protection to 929 MHz licensees based on interference contours," the NPRM proposes to limit additions or modifications to 929 MHz systems to such contours.^{4/} A+ notes, however, that protection is provided to 929 MHz licensees through specified transmitter site mileage separations, which separations are predicated on the interference contour of a benchmark station operating at 1 kw with a 1000' antenna height.^{5/} A+ further points out that 929 MHz incumbents have designed their systems

^{3/} NPRM, at ¶ 140 (emphasis added).

^{4/} NPRM, at ¶ 141.

^{5/} 47 C.F.R. § 90.495(b)(2).

and developed their business plans in reliance upon the protection afforded by the mileage separations presently specified in the Commission's rules. To now restrict interim expansion or modification to actual interference contours, will disrupt the business plans and competitive postures of the incumbent licensees, and will adversely affect the incumbents ability to provide paging service responsive to the needs of their proposed service areas. Therefore, A+ suggests it would better serve the public interest, and would provide more equitable relief to incumbent licensees if the Commission would limit interim additions and modifications to 929 MHz systems to interference contours determined as if the existing sites in those systems were operating at 1 kw and 1000' HAAT, regardless of the actual values attributable to the component sites in those systems.

Interim "Slow Growth"

The NPRM proposes to "dismiss all 'slow growth' applications pending at the time an order pursuant to this [NPRM] is adopted..."^{6/} However, the NPRM's interim licensing proposal does not address the interim treatment of systems which are the subjects of slow growth applications pending, but not granted, prior to the Commission's adoption of the NPRM. A+ submits that incumbent licensees with pending slow growth applications need the guidance of interim rules on that subject.

^{6/} NPRM, at ¶ 42.

When the Commission adopted the present exclusive licensing scheme for the 929-930 MHz band, "slow growth" was a critical element of that scheme. Subsequently, incumbent licensees relied upon the slow growth provisions when designing and scheduling the implementation of their systems.^{7/} To now summarily deprive those licensees of the benefits of the rule provisions upon which they reasonably relied, and with which they complied, would be inequitable and a violation of due process, especially if no relief was provided through interim or transition provisions.

A+ urges the Commission to provide interim procedures for the completion of buildouts which were the subjects of slow growth applications pending prior to the Commission's adoption of the NPRM. With regard to facilities for which such slow growth applications presently are pending, interim procedures should permit, at minimum, the completion of slow growth buildouts on an accelerated basis. Any accelerated deadline should extend to at least the date of the contemplated order by which the Commission will dismiss still pending slow growth applications. However, a more efficient and equitable interim procedure would specify a deadline (at least 90 days after public notice of such deadline) by which any slow growth buildout must be completed.

^{7/} 47 C.F.R. § 90.496. In reliance upon this provision, A+ filed a proper slow growth application supported by a buildout schedule and the required bond. That application presently is pending.

It also should be recognized that during the pendency of their slow growth applications, several incumbents, including A+, have diligently continued their system buildouts in reliance on the slow growth program. In recognition of those licensees' reliance and efforts, the Commission should adopt an interim procedure which assures incumbent licensees that they will be able to maintain any authorized 929 MHz facility completed in reliance upon a pending slow growth application, even if the initial construction authorization for such facility would have expired but for the pendency of the slow growth application.

Respectfully submitted,

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March 1, 1996